IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 16347 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE H.K.RATHOD

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHRAMJIVEE KAMDAR SANGH & 1 - Petitioner(s)
Versus
SARDAR SAROVAR NARMADA NIGAM LTD & 3 - Respondent(s)

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Appearance :
MRS DT SHAH for Petitioner(s) : 1 - 2.
MS SEJAL K MANDAVIA for Respondent(s) : 1 - 2.
Mr. Mukesh Patel AGP for Respondent(s) : 3 - 4.

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CORAM : HONOURABLE MR.JUSTICE H.K.RATHOD

Date : 16/01/2006

ORAL JUDGMENT

Heard learned advocate Mrs. D.T. Shah for petitioner, Ms. Mandavia for respondents No.1-2 and Mr. Mukesh Patel, learned AGP for Respondents No.3-4. In this petition, petitioner has challenged order passed by Deputy Labour Commissioner, communicated to petitioner vide letter daqted 22nd September, 2003 by Government Labour Officer Patan, whereby petitioner was informed that Deputy Labour Commissioner has considered the report submitted by the Conciliation Officer under section 12 sub section (4) of the Industrial Disputes Act, 1947 in the industrial dispute between the parties and since the number of workmen working in the etablishment is seven as stated by the union, reference for adjudication cannot be made, therefore, dispute is not referred to for adjudication.

2. Learned advocate Mrs. Shah has submitited

that at the time when conciliation proceedings were initiated between parties, it was verified by conciliation officer that more than fifteen workmen are working in establishment. This is a part of record which was ignored by appropriate authority while taking decision under section 12(5) of ID Act, 1947. Therefore, she submitted that order passed by authority is contrary to record, therefore, order may be quashed.

3. Mr. Patel, learned AGP has submitted that if the submission made by Mrs. Shah is correct, then, petitioner shall have to approach concerned authority with an application to reconsider the decision. He also submitted that along with such application for reconsideration, they may produce material to show that more than fifteen workmen are working in establishment and verified by the conciliation officer. Therefore, it is his submission that in that case, petitioner should approach appropriate authority again with an

application to reconsider decision and if such application is made by petitioner, appropriate authority will reconsider and re-examine matter within reasonable period, therefore, there is no need to interfere because it is an administrative order passed by authority.

4. I have considered submissions made by learned advocates for parties. Considering submissions made by learned advocates for parties and also considering fact that Deputy Labour Commissioner has declined to refer matter for adjudication only on the ground that only seven workmen are working in the establishment which conclusion, according to submission of Mrs. Shah, is contrary to record, in such circumstances, it is better for petitioner to approach Deputy Labour Commissioner, Patan/Government Labour Officer, Patan with an application to reconsider decision dated 22nd September, 2003 and also to verify record of conciliation officer. If such

application is made by petitioner within fifteen days to concerned authority namely Deputy Labour Commissioner/Government Labour Officer, Patan, then, it is directed to Deputy Labour Commissioner/Government Labour Officer, Patan to reconsider the matter by deciding such application and to verify record of conciliation officer in respect of present case and then to pass appropriate order in accordance with law within one month from the date of receipt of such application after giving reasonable opportunity to parties and considering material on record and to communicate the same to petitioner immediately thereafter.

With these observations and directions, this petition is disposed of. Rule is made absolute in terms indicated hereinabove with no order as to costs. It is clarified that this order has been passed by this Court without examining merits of the matter.

[H.K.Rathod,J.]

Vyas